IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.1104 of 2007

Abhinav Nivrutti Godse Applicant

Vs.

Balvirsingh Motiram Punjabi & anr. Respondents

Mr.H.E.Palwe for applicant.

Mr.P.A.Pol, APP for State.

CORAM: B.H.MARLAPALLE, J.

July 19, 2007.

P.C.

. Heard Mr.Palwe, the learned counsel for the applicant who was the accused in Criminal Case No.220A/1997 filed in the Court of the learned Judicial Magistrate, First Class at Nashik for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The complainant remained absent after his examination-in-chief was recorded on 11/4/2002 and, therefore, the accused moved an application at Exhibit 85 praying for dismissal of the complaint on the ground that the complainant was remaining absent continuously. This application was allowed but by invoking the powers under Section 258 of Cr.P.C. i.e. the proceedings

came to be stopped under the said section. The complainant, therefore, filed Criminal Revision Application No.69 of 2003 which has been allowed by the learned 1st Ad-hoc Addl. Sessions Judge at Nashik by his judgment and order dated 3rd March 2005.

. The learned Sessions Judge held that it was not permissible for the learned Magistrate to stop the proceedings under Section 258 of Cr.P.C. and discharge the accused. He further held that the Magistrate does not have powers to do so under Section 258 of Cr.P.C. and the power available to the Magistrate was under Section 256 of Cr.P.C. to dismiss the complaint for non-prosecution and acquit the accused. It was under these circumstances that the revision came to be allowed and the complaint has been restored to file. The reasoning set out by the revision court cannot be termed as perverse or illegal and, therefore, no interference is called for in the impugned order. Hence the application stands rejected.

. However, this order will not come in the way of the accused to apply afresh to the Magistrate for

dismissal of the complaint under Section 256 of Cr.P.C. and for his acquittal consequently on the ground of non-appearance of the complainant, if so required.

(B.H.MARL